

In The

DEC 18 1986

JOSEPH F. SPANIOL, JR.

**Supreme Court of the United States**

October Term, 1986

**ARACE BROTHERS, et al.,***Petitioners,*

vs.

**STATE OF NEW JERSEY,***Respondent.*

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**PETITION FOR APPEAL TO THE SUPREME COURT OF  
NEW JERSEY**

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## **QUESTIONS PRESENTED FOR REVIEW**

- 1. Does the New Jersey Antitrust Act, which has been applied by the State to permit its Attorney General who was preparing this civil suit to actively participate in the presentment to the Grand Jury along with the attorneys who were conducting a parallel criminal investigation without applying for or obtaining a disclosure order, unconstitutionally infringe upon the secrecy of the Grand Jury?**
  
- 2. Does the Attorney General's active participation in the Grand Jury while he was preparing this civil case, as well as his use of the Grand Jury information in this civil matter without a disclosure order, require that the suit be dismissed or, at the very least, that the Attorney General be recused from handling this civil suit because he now cannot dissociate himself from the knowledge that he improperly gained from his active participation in the Grand Jury?**

## PARTIES TO THE PROCEEDING BELOW

Petitioners in the proceeding below include the following defendants: Arace Brothers; Frank Capasso t/a Capasso Bros.; William A. Carey Co., Inc.; William A. Carey, Jr.; Crystal Carting Corp.; Custom Disposal, Inc.; Renee C. DiNardi; Joe DiRese & Sons, Inc.; NJ State Municipal Contractors Association; J. Filiberto Sanitation, Inc.; Joseph B. Filiberto; Salvatore Franco; Carmine Franco, Inc.; Schaper Disposal Works, Inc.; Piccini Sanitation, Inc.; Carmine Franco; Frank Fenimore, Inc.; Frank Fenimore; Madeline Fenimore (deceased); Giulio Fenimore; Michael Fenimore; Hudson Jersey Sanitation Company; Anthony F. Marangi; Estate of Carmine D. Marangi; Frank Stamato & Co.; Frank Stamato, Sr.; Frank Stamato, Jr.; Patsy Stamato, Sr.; Patsy Stamato, Jr.; Impac, Inc.; Pompeo Iommetti; Chester Iommetti; Tony Iommetti; Industrial Haulage Corp.; Intercity Services, Inc.; SCA Services, Inc.; SCA Services of New Jersey, Inc.; Waste Disposal, Inc.; Vincent M. Ippolito, Inc.; Vincent M. Ippolito; LaFera Contracting Co.; Joseph LaFera; Local 945, Teamsters; Malanka & Sons, Inc.; Carmine F. Malanka; Gerald E. Malanka; Anthony Malanka; Maplewood Disposal Company; Robert Miele; Richard Cignarella; William F. Palmer; Hazel S. Palmer; Arthur Rosselle; Vincent Apice; Meadowbrook Carting Co.; White Brothers Trucking Company; John P. Pinto; Joseph C. Rosselle; Peter Rosselle; Marpal Company; Angelo Miele & Sons, Inc.; Christopher Miele; Samuel Miele; Orie Schaper; William Schaper; Thomas C. Viola; Vito Stamato & Co., Inc.; Vito Stamato; L. Pucillo & Sons, Inc.; Chester Pucillo; John C. Filiberto; Miele Sanitation Company; Joseph Miele; Frank M. Notarangelo t/a Frank M. Notarangelo Carting Service; James Petrozello Co., Inc.; Joseph C. Cassini, Jr.; PET-AM, a Joint Venture; Petrozello-Maplewood, a Joint Venture; 3-D Service Co., Inc.; Howard Stamato; Anthony Votto (deceased); Val Sica; P & M Sanitation Co.; United Carting Company, Inc.; Ralph G. Mastrangelo; John Albert; Eugene Conlon; Joseph Mastrangelo;

Carmine Pucillo; Felice DiRese; Joseph DiRese; Dominek DiRese;  
George A. Lohman.

Respondent is the State of New Jersey. In addition, the following defendants are parties in the proceeding below: C. Egan & Sons; Cresencio Miele t/a Joseph Miele & Sons; Ralph Marangi & Co.; Ralph Marangi; Franklin Raso; and Joseph Marangi.

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No.

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October Term, 1986

ARACE BROTHERS, *et al.*,

*Petitioners,*

vs.

STATE OF NEW JERSEY,

*Respondent.*

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## PETITION FOR APPEAL TO THE SUPREME COURT OF NEW JERSEY

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### OPINION BELOW

The opinion of the trial court, Superior Court of New Jersey, Law Division, which is unreported, is included in the Appendix (21a). The order of the trial court embodying this opinion also is included in the Appendix (17a). In addition, the orders of the Superior Court of New Jersey, Appellate Division, (15a) and the New Jersey Supreme Court (14a) denying petitioners' motions

for leave to appeal also are unreported and are included in the Appendix.

### **JURISDICTIONAL STATEMENT**

The order of the New Jersey Supreme Court was entered on September 19, 1986. The Supreme Court of the United States has jurisdiction to review this order of the New Jersey Supreme Court pursuant to 28 U.S.C. § 1257 or, in the alternative, pursuant to 28 U.S.C. § 2101.

### **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

United States Constitution, Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

New Jersey Statutes Annotated 56:9-1, *et seq.*, the entire text of which is set forth in the Appendix (55a).

## STATEMENT OF THE CASE

### A. Material Facts

The New Jersey Attorney General's office historically has organized and continues to organize its Antitrust Division so that its attorneys and other personnel who are preparing a civil suit routinely are permitted, if not assigned, to at the same time actively participate in the presentment of a parallel criminal investigation to a Grand Jury without obtaining any disclosure order. The State has justified this organization by contending that the New Jersey Antitrust Act, N.J.S.A. 56:9-1, *et seq.*, which empowers the Attorney General to handle both criminal and civil matters, authorizes the Attorney General to permit its attorneys handling civil investigations to participate in the Grand Jury presentment being handled by Attorneys General assigned to the criminal investigation.

In the present case, in early 1984, after the State had gathered a significant amount of information concerning the solid waste collection and disposal industry in New Jersey for use in this civil suit, it initiated a Grand Jury proceeding to further investigate the industry. The State then permitted the Attorney General who was handling the civil investigation and now is handling this civil suit, Gerard C. Sims, Jr., to actively participate in the Grand Jury presentment along with the attorney who was assigned to the criminal investigation. Mr. Sims then used the information he obtained from the Grand Jury to prepare this civil suit without ever applying for or obtaining any disclosure order.

On or about October 18, 1984, after this joint presentment to the Grand Jury by Mr. Sims and the attorney conducting the criminal case, the State simultaneously filed the civil complaint in the present suit against over 100 defendants and announced that the Grand Jury had returned indictments in the criminal

matter against a few defendants. The State also announced in a press release dated October 18, 1984, that Mr. Sims, who signed the civil complaint, had presented this matter to the Grand Jury along with the attorney who was handling the criminal case.

It therefore is undisputed that Mr. Sims actively participated in the presentment to the Grand Jury even though he was handling the civil investigation. Furthermore, he still is using the knowledge that he gained from his active participation in the Grand Jury proceeding to litigate this civil suit.

#### **B. Procedural Statement**

On October 18, 1984, a complaint was filed by the State of New Jersey against over 100 defendants alleging antitrust violations in the solid waste and collection industry. On October 31, 1984, an amended complaint was filed (38a). On or about April 1, 1985, the joint defense effort<sup>1</sup> filed a motion, which is the subject of this appeal, to dismiss the complaint, recuse certain attorneys and other persons working on behalf of the State who were involved in the Grand Jury or had access to Grand Jury material or, in the alternative, hold an evidentiary hearing to demonstrate the State's abuse of the Grand Jury and improper use of Grand Jury material.

In an oral opinion rendered on December 9, 1985, the Honorable Coleman T. Brennan, after finding that the

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1. On or about March 25, 1985, the trial court entered Case Management Order I, which provided for the establishment of a joint defense effort that was to be composed of all defendants who did not move to be excluded from the joint defense effort and appointed Michael B. Himmel, Esq., of Greenbaum, Rowe, Smith, Ravin, Davis and Bergstein as the liaison counsel for the joint defense effort. Only defendants C. Egan & Sons, Cresencio Miele t/a Joseph Miele & Sons, Ralph Marangi & Co., Ralph Marangi, Franklin Raso and Joseph Marangi, of the over 100 defendants in this suit, moved to be and are excluded from the joint defense effort.

organization of the Attorney General's Antitrust Division "in failing to separate the criminal litigation and staff from the civil litigation and staff, infringes on Grand Jury secrecy for criminal proceedings and impermissibly results in unauthorized access to disclosure of Grand Jury materials," (31a), denied the motion for dismissal of the complaint, recusal, or an evidentiary hearing to determine the extent of the State's abuse of the Grand Jury and improper access to Grand Jury material. This decision, which is set forth in an order entered on March 3, 1986 (17a), merely prohibited the plaintiff from continued use of or access to the Grand Jury material that it already had used to prepare this civil suit unless the State moved before the court to re-obtain access to that Grand Jury information and material. In addition, the court denied a request by the joint defense effort to prohibit the State from (1) using the fruits of this material; (2) continuing to organize its Antitrust Division so as to permit attorneys handling a civil investigation and/or suit to actively participate in a Grand Jury investigation relating to a similar subject matter; and (3) authorizing its attorneys handling this civil suit to continue investigating any related matter in the Grand Jury (18a-20a).

The joint defense effort then filed motions for leave to appeal the trial court's order, which were denied by the New Jersey Appellate Division (15a) and Supreme Court (14a).

## REASONS FOR GRANTING THE PETITION

This case presents a situation in which the government has applied its powers under the New Jersey Antitrust Act, N.J.S.A. 56:9-1, *et seq.*, in violation of Grand Jury secrecy requirements, including the necessity for obtaining a disclosure order before releasing Grand Jury information for use in a civil suit, by routinely permitting its attorneys handling civil investigations to actively participate in the presentment to the Grand Jury in a parallel criminal investigation along with the attorney handling the criminal investigation. This situation previously has not been presented in any reported decisions of this Court. As a result, lower courts have not had any guidance from this Court as to whether such conduct is prohibited not only in this case but in similar situations. In addition, assuming that this conduct is prohibited, guidance is necessary concerning what sanctions should be applied to remedy the violations in this matter and deter such future breaches of Grand Jury secrecy and abuses of the Grand Jury.

In *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983), where attorneys from the Justice Department's Civil Division who had not been involved in a criminal investigation moved for disclosure of Grand Jury information after the criminal matter had been concluded, this Court emphasized the longstanding principle that disclosure of Grand Jury materials for use in a civil suit only could be made pursuant to a court order that only would be issued upon a showing of particularized need for this information. Similarly, in *United States v. Procter & Gamble Co.*, 356 U.S. 677, 683 (1958), this Court held that certain Grand Jury information should not be revealed where the government had in no way used the Grand Jury proceeding "as a shortcut to goals otherwise barred or more difficult to reach." However, the Court did not deal in either of these cases or any other case with the situation in the present case where an attorney who was handling the civil investigation at the same time actively

participated in the presentment to the Grand Jury in a parallel criminal investigation.

Furthermore, in a case that presently is pending before this Court, *In re Grand Jury Investigation*, 774 F.2d 34 (2d Cir. 1985), cert. granted, 106 S. Ct. 2244 (1986), the Department of Justice properly moved for and obtained a disclosure order to permit the Civil Division of the Justice Department to review Grand Jury material. Thus, even *In re Grand Jury Investigation* does not deal with the blatant abuse evidenced in the present case in which the government has organized its Attorney General's office so as to permit its attorneys handling civil cases to participate in Grand Juries and use Grand Jury information in preparation for civil suits without ever obtaining a disclosure order.

## I.

**The organization of the New Jersey Attorney General's office to permit, and even assign, attorneys handling civil investigations to actively participate in a Grand Jury presentment involving a parallel criminal investigation violates the basic tenets of Grand Jury secrecy and requirements for a disclosure order that clearly have been set forth by this Court.**

More than twenty years ago, this Court emphatically stated that a prosecutor's use of "criminal procedures to elicit evidence in a civil case . . . would be flouting the policy of the law." *United States v. Procter & Gamble Co.*, 356 U.S. 677, 683 (1958). Recently, in *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983), the Court, while emphasizing that the Grand Jury is "enshrined in the Constitution," *id.* at 423, *see U.S. Const., Amend. V*, recognized the significant danger of misusing the Grand Jury, stating:

If prosecutors in a given case knew that their

colleagues would be free to use the materials generated by the Grand Jury for a civil case, they might be tempted to manipulate the grand jury's powerful investigative tools to root out additional evidence useful in the civil suit, or even to start or continue a grand jury inquiry where no criminal prosecution seemed likely. Any such use of grand jury proceedings to elicit evidence for use in a civil case is improper per se.

*Id.* at 432.

Despite such an admonition by this Court against the manipulation of the Grand Jury to root out additional evidence for use in a civil suit, the New Jersey Attorney General routinely permits its attorneys handling civil investigations to be actively involved in Grand Jury presentments even though the State already has obtained enough information through its civil investigative powers to know, or at least be fairly certain, that it will be bringing a civil suit concerning the matters that are the subject of the criminal investigation. Unless this Court grants this appeal and deals with this issue, the New Jersey Attorney General, as well as other justice departments, undoubtedly will continue to abuse the Grand Jury to ferret out information for civil suits in other cases.

## II.

**It is essential for this Court to provide guidance to lower courts concerning what sanctions should be ordered to remedy the government's blatant misuse of the Grand Jury to discover and disclose information for this civil case, as well as to deter such abuses in other civil cases.**

Although the trial court below specifically found that the

organization of the State's Antitrust Division in having its attorneys handle civil cases while at the same time actively presenting matters to the Grand Jury on related subjects constituted an impermissible disclosure of Grand Jury material to the attorneys for the civil case, the trial court apparently felt constrained to provide any meaningful remedy for this blatant violation because of a lack of precedent for imposing a meaningful sanction. For example, the trial court noted that it was unaware of any precedent for dismissing a civil complaint for such an abuse of the Grand Jury and did not have any precedent for recusing the Attorney General who participated in the presentment to the Grand Jury while preparing this civil case.

Although at least one case has held that if a defendant "believes that the government has improperly used the Grand Jury to obtain evidence for civil law enforcement purposes, it can raise that question by . . . a Motion to dismiss the Complaint," *In re April 1977 Grand Jury Subpoenas*, 584 F.2d 1366, 1370 (6th Cir. 1978), *cert. denied*, 440 U.S. 934 (1979), this Court has not addressed the issue of when a court should dismiss a civil complaint based upon the abuse of the Grand Jury. Indeed, although courts have not hesitated to dismiss criminal indictments where, as here, there has been a governmental abuse of the Grand Jury, *see, e.g., United States v. Serubo*, 604 F.2d 807, 817 (3d Cir. 1979) (indictment dismissed due to prosecutorial misconduct before the Grand Jury, the Court saying that "dismissal of an indictment may be virtually the only effective way to . . . protect defendants from abuse of the grand jury process"); *United States v. Jacobs*, 547 F.2d 772 (2d Cir. 1976), *cert. dismissed*, 436 U.S. 31 (1978) (indictment dismissed where government failed to follow uniform practice in Circuit of informing witness of target status); *United States v. Estepa*, 471 F.2d 1132 (2d Cir. 1972) (indictment dismissed because government failed to heed repeated warnings regarding use of hearsay); *United States v. Lawson*, 502 F. Supp. 158 (D. Md. 1980) (indictment dismissed because prosecutor failed

to disclose exculpatory evidence to Grand Jury); *United States v. Braniff Airways, Inc.*, 428 F. Supp. 579 (W.D. Tex. 1977) (antitrust indictment dismissed because of Grand Jury irregularities), absent such guidance by this Court, there are no reported decisions of lower courts dismissing a civil suit even where the Grand Jury abuse has been as blatant as in the present case.

Unless this Court sets forth guidelines for imposing this sanction, and in fact imposes this sanction under the egregious circumstances of the present case, Attorneys General and justice departments around the country will continue to permit their attorneys handling civil cases to routinely participate in the presentment to Grand Juries concerning a parallel criminal investigation. Absent some meaningful sanction and guidance by this Court, there simply is no reason for the government to reorganize its offices so as to segregate its attorneys handling civil investigations from those handling parallel criminal investigations.

At the very least, this Court should issue guidelines directing that an attorney, such as the Attorney General in the present case, who improperly obtains material from the Grand Jury while preparing or handling a parallel civil suit will not be permitted to reap the benefits of this wrongfully obtained material. There is one particular principle which, perhaps more than any other, must be exalted through the remedial sanctions imposed in this or any other such case: the government never should be permitted to reap the rewards of its own purposeful manipulation of a Grand Jury for unlawful ends. If such conduct were condoned or not meaningfully sanctioned, the prohibition against Grand Jury abuse would be meaningless and the mischief that would result would be profound.

The trial court simply failed to provide any meaningful deterrent when it merely prohibited the State from continuing to use the Grand Jury material upon which the State based its

civil suit unless the State moved for a disclosure order to re-obtain access to this Grand Jury material. Indeed, the Attorney General handling this civil suit and other personnel in his office are intimately familiar with all of this information that wrongfully was secured from the Grand Jury. This information, as well as the fruits of this information, no longer realistically can be extricated from their knowledge. Thus, if the government is to be deterred from continuing such egregious conduct, at the very least, this Court should direct that the Attorney General who improperly participated in the Grand Jury at the same time he was preparing this civil suit should be recused.

**CONCLUSION**

For the foregoing reasons, petitioners respectfully request that this Court grant their petition for leave to appeal and review the denial of their motion to dismiss this civil action, to recuse the State's counsel and other persons improperly appearing before or having access to information from the Grand Jury or, in the alternative, to conduct an evidentiary hearing to demonstrate the abuse of the Grand Jury and improper use of Grand Jury material.

Dated: December 18, 1986

Respectfully submitted,

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**APPENDIX A—NOTICE OF APPEAL  
FILED DECEMBER 17, 1986**

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Docket No. 25,585**

**Superior Court of New Jersey  
Law Division  
Docket No. 069569-84**

**STATE OF NEW JERSEY,**

**Plaintiff,**

**VS.**

**ARACE BROTHERS, et al,**

**Defendants.**

**NOTICE OF APPEAL TO THE UNITED STATES SUPREME  
COURT FROM AN ORDER OF THE NEW JERSEY  
SUPREME COURT**

**Notice is hereby given that the members of the Joint Defense**

2a

*Appendix A*

Effort, as named on the list attached hereto, who are among the defendants to the above-captioned proceeding, hereby appeal to the United States Supreme Court from the Order of the New Jersey Supreme Court denying said defendants' Motions for Leave to Appeal and for Summary Reversal, which was entered in this action on the 19th day of September, 1986.

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**DATED: December 17, 1986**

**APPENDIX B—NOTICE OF APPEAL  
FILED DECEMBER 16, 1986**

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Docket No. 25,585**

**Superior Court of New Jersey  
Law Division  
Docket No. 069569-84**

**STATE OF NEW JERSEY,**

**Plaintiff,**

**VS.**

**ARACE BROTHERS, et al.,**

**Defendants.**

**NOTICE OF APPEAL TO THE UNITED STATES SUPREME  
COURT FROM AN ORDER OF THE NEW JERSEY  
SUPREME COURT**

**Notice is hereby given that the members of the Joint Defense**

*Appendix B*

Effort, as named on the list attached hereto, who are among the defendants to the above-captioned proceeding, hereby appeal to the United States Supreme Court from the Order of the New Jersey Supreme Court denying said defendants' Motions for Leave to Appeal and for Summary Reversal, which was entered in this action on the 19th day of September, 1986.

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*Appendix B*

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Marangi  
Frank Stamato & Co.  
Frank Stamato, Sr.  
Frank Stamato, Jr.  
Patsy Stamato, Sr.  
Patsy Stamato, Jr.

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Kaplowitz  
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Impac, Inc.  
Pompeo Iommetti  
Chester Iommetti  
Tony Iommetti

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Company no longer exists,  
merged into SCA of New  
Jersey

Industrial Haulage Corp.

Mark D. Larner, Esq.  
Budd, Larner, Kent, Gross  
Picillo, Rosenbaum,  
Greenberg & Sade  
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Intercity Services, Inc.  
SCA Services, Inc.  
SCA Services of New Jersey,  
Inc.  
Waste Disposal, Inc.

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Vincent M. Ippolito, Inc.  
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LaFera Contracting Co.  
Joseph LaFera

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Local 945, Teamsters

and

Ira Drogin, Esq.

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**Miele, Cooper, Spinrad &**  
**Kronberg**  
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**Waldron Kraemer, Esq.**

**Malanka & Sons, Inc.**  
**Carmine F. Malanka**  
**Gerald E. Malanka**  
**Anthony Malanka**

**Maplewood Disposal Company**  
**Robert Miele**  
**Richard Cignarella**

**William F. Palmer**  
**Hazel S. Palmer**

**Arthur Rosselle**  
**Vincent Apice**  
**Meadowbrook Carting Co.**  
**White Brothers Trucking**  
**Company**  
**John P. Pinto**  
**Joseph C. Rosselle**  
**Peter Rosselle**

**Marpal Company**

*Appendix B*

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Kimmelman, Wolff & Samson    Christopher Miele  
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and

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*Appendix B*

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Vito Stamato & Co., Inc.  
Vito Stamato

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L. Pucillo & Sons, Inc.  
Chester Pucillo

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Miele Sanitation Company  
Joseph Miele

Edward K. Zuckerman, Esq.  
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Frank M. Notarangelo t/a  
Frank M. Notarangelo  
Carting Service

Joseph C. Cassini, III, Esq.  
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West Orange, NJ 07052  
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James Petrozello Co., Inc.  
Joseph C. Cassini, Jr.  
PET-AM, a Joint Venture  
Petrozello-Maplewood, a  
Joint Venture

*Appendix B*

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Guterman, Wolkstein,	Joseph DiRese
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240 E. Grove St.	George A. Lohman
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Westfield, NJ 07091	

**APPENDIX C—ORDER OF NEW JERSEY SUPREME  
COURT DATED SEPTEMBER 19, 1986**

**SUPREME COURT OF NEW JERSEY**

25,585

**STATE OF NEW JERSEY.**

**Plaintiff-Respondent,**

VS.

## ARACE BROTHERS, et al.

### **Defendants-Movants.**

## ORDER

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal is denied (M-43); and it is further

ORDERED that the motion for summary reversal is denied (M-44).

WITNESS, The Honorable Robert L. Clifford, Presiding Justice, at Trenton, this 16th day of September, 1986.

s/ Stephen Townsend  
Clerk

**APPENDIX D—ORDER OF THE NEW JERSEY SUPERIOR  
COURT—APPELLATE DIVISION DATED APRIL 9, 1986**

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. AM-775-85T5  
MOTION NO. M-3061-85  
BEFORE PART D**

**JUDGES: MICHELS, GAULKIN, DEIGHAN**

**STATE OF NEW JERSEY**

**VS**

**ARACE BROTHERS, ET AL**

**MOVING PAPERS FILED MARCH 18, 1986**

**ANSWERING PAPERS FILED MARCH 31, 1986**

**DATE SUBMITTED TO COURT APRIL 9, 1986**

**DATE DECIDED APRIL 9, 1986**

**ORDER**

**THIS MATTER HAVING BEEN DULY PRESENTED TO  
THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:**

**JOINT MOTION FOR LEAVE TO APPEAL DENIED.**

**SUPPLEMENTAL:**

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I hereby certify that the foregoing is a true copy of the original on file in my office.

s/ Elizabeth McLaughlin  
Clerk

FOR THE COURT:

s/ Herman D. Michels  
HERMAN D. MICHELS,  
P.J.A.D.

WITNESS, THE HONORABLE HERMAN D. MICHELS,  
PRESIDING JUDGE OF PART D, SUPERIOR COURT OF  
NEW JERSEY, APPELLATE DIVISION, THIS 9th DAY OF  
APRIL 1986.

s/ Elizabeth McLaughlin  
CLERK OF THE  
APPELLATE DIVISION

**APPENDIX E—ORDER OF NEW JERSEY SUPERIOR  
COURT—LAW DIVISION DATED MARCH 3, 1986**

W. CARY EDWARDS  
ATTORNEY GENERAL OF NEW JERSEY  
ATTORNEY FOR PLAINTIFF  
BY: GERARD C. SIMS, JR.  
DEPUTY ATTORNEY GENERAL  
DIVISION OF CRIMINAL JUSTICE  
RICHARD J. HUGHES JUSTICE COMPLEX  
25 MARKET STREET  
C.N. 085  
TRENTON, NEW JERSEY 08625  
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**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION — MERCER COUNTY**

**DOCKET NO. L-069569-84**

**CIVIL ACTION**

**STATE OF NEW JERSEY,**

**Plaintiff,**

**v.**

**ARACE BROTHERS, ET AL.,**

**Defendants.**

**ORDER DENYING MOTIONS FOR DISMISSAL OF THE  
COMPLAINT AND FOR OTHER RELIEF**

*Appendix E*

THIS DOCUMENT RELATES TO:

MOVING PARTY: JOINT DEFENSE EFFORT

MOTION BROUGHT AGAINST: PLAINTIFF

TYPE OF ACTION: TO DISMISS THE COMPLAINT AND FOR OTHER RELIEF.

RELIEF SOUGHT: TO DISMISS THE COMPLAINT, TO RECUSE PLAINTIFF'S COUNSEL, INVESTIGATORS, EMPLOYEES AND AGENTS APPEARING BEFORE OR HAVING ACCESS TO INFORMATION AND MATERIAL RELATING TO CERTAIN GRAND JURY PANELS, OR, IN THE ALTERNATIVE, FOR AN EVIDENTIARY HEARING ON THE ISSUE OF GRAND JURY ABUSE.

This matter having been opened to the Court by the joint defense effort, Michael B. Himmel, Esq., of Greenbaum, Rowe, Smith, Ravin, Davis & Bergstein, and Roger B. Kaplan, Esq., of Wilentz, Goldman & Spitzer, appearing, and opposition having been received from plaintiff, Gerard C. Sims, Jr., DAG., appearing, upon a review of the papers submitted, argument having been heard and for other good cause shown,

IT IS on this 3rd day of March, 1986 hereby

ORDERED that the Motion of the joint defense effort for dismissal of the Complaint for failure to state a cause of action is hereby denied; and it is hereby

FURTHER ORDERED that plaintiff's request for damages under Count III of the Complaint is hereby stricken; and it is hereby

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FURTHER ORDERED that the Motion of the joint defense effort for dismissal of the Complaint, or, in the alternative, for an evidentiary hearing based upon an alleged abuse of the Grand Jury is hereby denied; and it is hereby

FURTHER ORDERED that the Motion of the joint defense effort for recusal of plaintiff's attorneys, investigators, employees, agents and any other persons who either appeared before any state Grand Jury that obtained evidence relating to investigations concerning the solid waste collection and disposal industry, including but not limited to the Grand Jury that returned the indictment in *State v. Angelo Miele & Sons, Inc., et al.*, Indictment No. SGJ 119-84-7(1), or used, examined, or had access to information or materials presented to, related to or derived from any matters occurring before any such Grand Jury panel is hereby denied; and it is hereby

FURTHER ORDERED that the present and future attorneys, investigators, employees, agents, and any other persons working for or on behalf of any parties for the purpose of this litigation shall not, after December 9, 1985, use, examine, or have access to matters occurring before any Grand Jury panel that obtained evidence relating to investigations concerning the solid waste collection and disposal industry, including but not limited to the Grand Jury that returned the indictment in *State v. Angelo Miele & Sons, Inc., et al.*, Indictment No. SGJ 119-84-7(1), except that this provision shall not preclude such persons involved in the defense of *State v. Angelo Miele & Sons, et al.* from using, examining, or having access to said matters for the purpose of that defense; and it is hereby

FURTHER ORDERED that any party may move on notice to all parties herein before the appropriate Court for an Order

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to obtain access to said Grand Jury information or materials, provided, however, that nothing in this Order shall be construed to alter or change the applicable standards governing access to or disclosure of Grand Jury materials.

s/ Coleman T. Brennan

Coleman T. Brennan, J.S.C.

**APPENDIX F—UNREPORTED OPINION OF NEW JERSEY  
SUPERIOR COURT—LAW DIVISION  
DATED DECEMBER 9, 1985**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-MERCER COUNTY  
DOCKET NO. L-069569-84**

**STATE OF NEW JERSEY**

**Plaintiff,**

**vs.**

**ARACE BROTHERS, et als,**

**Defendants.**

**PLACE: Mercer County Courthouse  
Trenton, New Jersey**

**DATE: December 9, 1985**

**B E F O R E:**

**THE HONORABLE COLEMAN T. BRENNAN, J.D.C.**

**TRANSCRIPT ORDERED BY:**

**GERALD SIMS, JR., DEPUTY ATTORNEY GENERAL  
Attorney for the State of New Jersey**

**GREENBAUM, ROWE, SMITH, RAVIN, DAVIS &  
BERGSTEIN**

**BY: BARRY S. GOODMAN, ESQ.  
Attorney for Joint Defense Effort**

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IRWIN, POST & ROSEN  
CHARLES J. IRWIN, ESQ.  
Attorney for Teamsters Local 945

JUDITH J. HALL, C.S.R.  
MERCER COUNTY COURTHOUSE  
TRENTON, NEW JERSEY

THE COURT: Would counsel put their appearances on the record please?

MR. SIMS: Gerald Sims, Jr., Deputy Attorney General for the State of New Jersey.

MR. GOODMAN: Barry S. Goodman of Greenbaum, Rowe, Smith, Ravin, Davis and Bergstein for the Joint Defense Effort.

THE COURT: All right, gentlemen, this is an action brought by the State of New Jersey alleging several violations of the Antitrust Act of the State of New Jersey as well as other basis of the cause of action. The defendants in this action have filed several motions to dismiss the Complaint. This opinion shall consider the issues raised by those motions and determine whether the Complaint should be dismissed on any of the grounds advanced by the defense. The Complaint was filed by the State on October 18, 1984, thereafter amended on October 31st, 1984 against one hundred and five designated individuals, corporations and partnerships, as defendants, seeking by way of relief; declaratory judgment; injunctions; statutory triple monetary damages; statutory penalties; rescission and restitution of monies paid; monetary compensatory damages; punitive damages; attorney fees and costs; and such other relief as provided by statute and by principles of the common law and equity. The complaint is divided into three counts. The First Count alleges violation of Section

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3 of the New Jersey Antitrust Act, NJSA 56:9-3, in that defendants are asserted to have engaged or entered into a combination or conspiracy in unreasonable restrain of trade or commerce in the State of New Jersey by entering an agreement or understanding with regard to the existence and enforcement of "property rights" within a relevant market with respect to the business or enterprise or garbage collection. The Second Count alleges that the defendants caused political subdivisions and public agencies in this State to purchase garbage collection services corruptly, non-competitively and in derogation of public bidding statutes, thereby inducing and effectuating the improper expenditure of public funds. The Third Count of the Complaint alleges that the previous stated actions of the defendants constituted a common law unreasonable restraint of trade, causing pecuniary losses to political subdivisions and agencies in the State.

Thereupon, by reason of the obvious complex nature of the case, involving as it does numerous parties; problems of procedural and discovery scheduling and unusual issues of law, a case management conference was held and a Case Management Order entered on March 26, 1985 by Judge Samuel D. Lenox, Jr., Assignment Judge of Mercer County. Among other matters the Case Management Order provides for the stay of all further proceedings in this action, including discovery proceedings, until the disposition of motion contemplated by the defendants at that time seeking the dismissal of the Complaint. Such motions were thereafter filed by the defendants and are the subject of this determination. The case was initially assigned to Judge H. Jonathan Fox, Judge of Superior Court, for continuous individualized consideration of all aspects of the litigation, but Judge Fox later found it necessary to recuse himself. The entire case was thereupon transferred to me, with like responsibility for its disposition.

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Two motions have been filed on behalf of all the defendants in the case challenging the legal sufficiency, efficacy and viability of all three Counts of the Complaint. The first motion contends that each of the three Counts failed to state causes of action upon which relief can be granted to the plaintiff, State of New Jersey. The second motion contends that this civil action was the product of abuse of the Grand Jury procedures by the State and is so permeated by improper disclosure of secret Grand Jury proceedings, that on grounds, or public policy, this action must be dismissed. Arguments on these motions were heard November 18, 1985, December 2nd, 1985, and the decision reserved until today.

Now, with respect to the motion to dismiss the First Count of the Complaint for failure to state the cause of action, the point of departure for considering this challenge to the legal sufficiency of the First Count of the Complaint. Are the allegations themselves as are set forth therein. Count I of the Complaint states in summarized form as follows: That from January the 1st of 1960 on, the defendants entered into or were engaged in a combination or conspiracy in unreasonable restraint of trade or commerce in the State of New Jersey by entering an agreement or understanding with regard to the existence and enforcement of "property rights" within the action that activities in unreasonable restraint of trade are involved. However, you still have a situation where plaintiff would have to prove that the activities of the defendants were tortiously directed at him and other persons so situated, in order to have a recovery of monetary damages. So, I do not find that *Grillo*, or the cases that have been cited by the State, the out-of-state cases, foreign cases, as recognizing a distinct cause of action that constitutes a common law antitrust cause of action for the recovery of damages.

\* \* \* \*

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Accordingly, I'm not going to dismiss the Third Count of the Complaint because it is viable as to dissolution of the corporations, and to that extent it alleges a cause of action, and so accordingly the Count of the Complaint should not be dismissed. It's merely a matter of the extent of the application of existing law to the allegations of the complaint that might be at issue, but that does not mean that the entire Third Count of the Complaint should be eliminated. So, I'm going to deny the motion to dismiss the Third Count of the Complaint for failure to state a cause of action.

The second motion that was brought by the defendants deals with an abuse, alleged abuse of Grand Jury proceedings and impermissible disclosure of Grand Jury proceedings. The motion seeks a dismissal of an entire complaint or, in the alternative, that there to be held an evidentiary hearing to develop a factual record respecting the institution and the conduct of the Grand Jury investigation into the subject matter of this civil action and respecting the extent to which the Grand Jury material was disclosed to governmental personnel not involved in the prosecution of criminal actions.

The operative facts required for the Court to consider and determine this motion are sufficiently set forth in the moving and opposition papers that have been submitted and appear not to be in substantial dispute. Hence, it is the legal effect and consequence of those facts which disagreement between the parties on this motion.

Briefly stated, this civil antitrust action is a culmination of many years of investigation by the New Jersey Attorney General's office into allege illegal activities in the awarding of municipal contracts for collection of garbage and solid waste in the State.

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On at least two prior occasions, Grand Juries were convened to consider allegations of criminal violation of the New Jersey Antitrust Act.

The investigation and conduct of proceedings, both criminal and civil, for the enforcement of the Antitrust Act in the State have been handled by the same Deputy Attorney General within the Antitrust Section of the Division of Criminal Justice of the New Jersey Attorney General's Office. With respect to the most recent State Grand Jury investigation, at least three Deputy Attorney Generals, including Deputy Attorney General Gerald C. Sims, Jr., who is conducting this civil antitrust action on behalf of the State, were active in the presentation of information and evidence to the Grand Jury. The Attorney General's office has never differentiated or segregated the staff attorneys handling civil antitrust matters from those attorneys handling criminal antitrust matters.

The State Grand Jury involved here conducted its investigation during 1984 and returned an indictment on October the 18th, 1984 against three solid waste collection companies, two individuals involved in the solid waste industry, and a public official. The indictment is denominated as *State versus Miele Sons, Inc., et al* Docket No. SGJ 119-84-9(1). The same day that the indictment was returned, another public official pleaded guilty to an accusation growing out of the investigation. Also, the same day that the criminal indictment was returned by the Grand Jury, this civil action was filed by the Attorney General. The criminal action is still pending.

It is undisputed that the same Deputy Attorney Generals who have participated in the preparation and conduct of this civil antitrust action have had considerable access to the proceedings

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of the Grand Jury and are intimately acquainted with the testimony of witnesses who appeared therein and the information contained in materials obtained through the compulsory Grand Jury process. Now, those are basically the facts as they are gleamed from the papers that have been submitted to the Court.

Initially, is observed that none of the cases cited to the Court by either party has held that a civil complaint must be dismissed under circumstances as here presented. Thus, the sanction sought by the defendants is a matter of first impression to the Court. The cases that have dealt with these matters are in two categories. The first category deals with the abuse or misuse of The Grand Jury process for purposes other than the investigation and indictment of criminal activities, such as the use of the Grand Jury investigation powers by way of discovery of evidence to be used solely in civil actions or use of Grand Jury proceedings for political purposes other than for return of indictments. This is a basic type of abuse of the fundamental purpose of the Grand Jury. The only case that has gone into this to any great extent has been the decision of the United States Supreme Court in the *Proctor and Gamble Case*. I was trying to get the citation. *U.S. versus Proctor and Gamble*, 356 US 677 2nd Lawyer's Edition 2nd 1077, NJ Superior 983, 1958 decision; and there the Supreme Court was concerned with what really was unsubstantiated, a representation on the part of defendants in that antitrust action that the Grand Jury proceedings, which did not result in the return of an indictment, were abused by the U.S. Attorney's Office, and with the remedy applied by the trial court, U.S. District Court in that case, providing wholesale disclosure of all the proceedings of the Grand Jury, all the transcripts of all the testimony before The Grand Jury—whether that was an appropriate remedy for that type of abuse. The Supreme Court was not convinced that there had been an abuse of the Grand Jury proceedings in that

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case, but nevertheless, the Court observed that if there had been wholesale—had there been an abuse of the Grand Jury proceeding by the prosecution, that a wholesale disclosure of the materials of the Grand Jury would be warranted, Proctor and Gamble stands for the proposition that the use of a Grand Jury for a purpose other than for a criminal indictment is—I'm trying to think of the word they used, is a "flouting of the law", which has been interpreted to mean the Supreme Court recognizes that it is grossly unethical for the government to convene a Grand Jury for purposes other than criminal action. The U.S. District Court, when the *Proctor and Gamble Case* was remanded, found that there had been no abuse, actual abuse, but considered the Supreme Court decision as having a two-part aspect to it; that if there had been abuse, then there should be wholesale disclosure of the Grand Jury testimony of transcripts and materials to the defendants in the civil action, and where there had not been abuse then the defendants are relegated to the same requirement that other litigants would be ie, a showing of a compelling need for disclosure of Grand Jury material.

So, I'm satisfied from what has been presented on this motion that there has not been an abuse of the Grand Jury process by the State Attorney General's office in connection with the subject matter of this civil antitrust action. The very fact that an indictment was returned, and it is presently pending, is sufficient showing that the Grand Jury was impaneled and conducted investigations, three investigations, in a good-faith effort to enforce the criminal laws of this State. If the byproduct of that information was determined appropriate for use in a civil antitrust action, then so be it. However, I don't find that there was any *per se* abuse of the Grand Jury involved in this case. Accordingly, the Court does not have to consider whether dismissal of the complaint would be a necessary or waranted remedy for the abuse of the Grand

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Jury procedures by the State Attorney General's office.

The second category of cases deals with a situation where there is a disclosure of the proceedings and materials of the Grand Jury in derogation of the secrecy rules that apply to Grand Jury proceedings. The cases that have dealt with this aspect of the Grand Jury-civil action dichotomy have dealt initially with the disclosure to other governmental branches, other governmental departments, where the complaint is—or the action involved an issue of whether it is proper for the prosecuting agency, Federal Department of Justice on a federal level, and the State Attorney General's office on a State level, to disclose materials that are derived from the Grand Jury investigation to other departments of the government, for use in civil proceedings. The courts have uniformly held that as in other circumstances, there should only be a disclosure and a lifting of the veil of secrecy of the Grand Jury where there is a compelling need and that it should only be pursuant to a court order that any part of the Grand Jury material be released to other agencies. Some cases that have dealt with this area are *Illinois versus Abbott and Associates*, [41] 460 U.S. 557, 75 L. Ed. 2d 281, 103 Supreme Court 1356; *United States versus Baggot*, 463 U.S. 476, 77 L. Ed. 2d, 785, 103 Supreme Court 3164; *State versus Doliner*, 96 N.J. 236; and *In re 15th Essex County Grand Jury*, 111 N.J. Super. 564.

Now, in those situations both the federal courts and the courts of New Jersey have adopted the standard that disclosure of Grand Jury materials to government departments for use in civil prosecutions is a strong showing of particularized need that outweigh the public interest with secrecy of Grand Jury proceedings. Otherwise, without a court order, disclosure of Grand Jury materials is impermissible. So, that's one that's another aspect as to whether there can be such a disclosure.

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In other recently—this is the result of a case, *United States versus Sells Engineering Inc.*, 463 U.S. 418, 77 L. Ed. 2d 743, 103 Supreme Court 3133, 1983. I was going to say, more recently attention has been focused on the disclosure of Grand Jury materials between attorneys in the same department of the government and in particular, at the federal level, where the Department of Justice in some instances had some attorneys handling civil matters involving the same subject matter as the Grand Jury criminal proceeding. The issue was presented as to whether that type of access to the Grand Jury by attorneys handling civil matters, not criminal matters, was in impermissible disclosure of Grand Jury materials violative of the right of secrecy of the Grand Jury, so that the attorneys for the Department of Justice on a Federal level could not permissibly have access to Grand Jury materials or participate in the Grand Jury proceedings. If they were not actively engaged in the criminal prosecution of criminal investigation that was the subject matter of the Grand Jury, Supreme Court recognized that the secrecy of the Grand Jury would be seriously compromised for that situation to exist. The decision of our State Supreme Court in *State versus Doliner* 96 NJ 236 (1984) factually was not concerned with this problem of interdepartmental disclosure of Grand Jury materials, but was concerned, as I say, with disclosure to other branches of the government. However, the holding and ruling in *State versus Doliner*, I think, includes disclosure to attorneys in the same department of government. The *State versus Doliner* decision expressly follows the ruling in *United States versus Sell Engineering, Inc.*, and in *State versus Doliner* our Supreme Court held, "In the absence of a governing rule or statute we agree that disclosure to government attorneys other than prosecutors must be subject to court approval. The standard we adopt is a strong showing of particularized needs that outweigh the interest in Grand Jury secrecy. Government attorneys and agencies must make the

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same showing as civil litigants. The public interest will be evaluated in weighing the need.

Now, there is no indication in *State versus Doliner* as to what action trial courts in civil cases should take to remedy the unauthorized disclosure of Grand Jury materials to a government attorney other than a consideration of that fact as a matter for the issuance of the court ordered disclosures to the adverse party in civil litigation. In any event, there is no suggestion in *State versus Doliner* that the civil action should be dismissed or that you should be granted—that evidence be denied to the government in a civil case. The Court is satisfied from its review of *Sells* and *Doliner* that the mode of operation conducted in civil and criminal antitrust litigation in the New Jersey Attorney General's office, in failing to separate the criminal litigation and staff from the civil litigation and staff, infringes on Grand Jury secrecy for criminal proceedings and impermissibly results in unauthorized access and disclosure of Grand Jury materials. To those who are not actually involved in the criminal aspects of the antitrust action.

However, the question is not before the court as to what measures the Attorney General's office should take to prevent, in the future, such impermissible disclosure and comply with the directions of the Supreme Court in *State versus Doliner*. The issue before the Court on this motion is what remedy to take.

Well, I'm satisfied that there has been in this case disclosure to the attorneys handling antitrust matters in a civil aspect that should not have taken place. The practice of having joint attorneys in both civil and criminal aspects of antitrust would appear to be proscribed by the case law. But as I say, what is there for the Court to do in this case to remedy the situation? The only suggestions made in the case law is to permit access and disclosure

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to the adverse party in a civil case on a need-to-know basis, and that the same standard applies that there must be a strong showing of particularized need that outweighs the interest in Grand Jury secrecy. The same rule would hold true for the State in this case, that they are prohibited from having any further access or continuing disclosure of the Grand Jury materials of this Grand Jury and prior Grand Juries that have investigated the solid waste collectors problem, without a court order to do so, based upon the same showing as the defendants.

To balance the scales in the conduct of this litigation, the State should be precluded from using any testimony or any materials that were obtained through the processes of the Grand Jury as evidence in this case either affirmatively or by way of attacking the credibility of witnesses without the court order to do so. In that way, the scales will be balanced in some respect between the State and the defendants. The court is satisfied that our normal discovery rules will be sufficient, at least over a period of time, for discovery in this case to bring out to a sufficient extent all of the facts upon which the State intends to rely at the trial in this case. Any initial advantage the State may have had by having access to Grand Jury materials will be balanced out through civil discovery by the time the case reaches trial.

Now, for the immediate purpose, I find that there is no precedent for the Court to dismiss the complaint, nor is there any necessity to do so in the interest of fairness to the defendants, it being recognized that the rules of secrecy are for the benefit and protection of the Grand Jury, to see that the Grand Jury works efficiently and effectively, and is not as a protection of any rights that the defendants may have in this civil litigation. Facts are facts whether they're developed through a Grand Jury process or a normal civil discovery. Nonetheless, there is no rule

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of law that bars the admissibility of those facts into evidence in a case simply because they were derived through the Grand Jury process. So, I don't find in this action that it would be appropriate to dismiss the complaint or to bar, *per se*, all of the materials that were generating in the Grand Jury proceedings. That includes also the idea that there should not be a suppression or impoundment of the Grand Jury materials, but simply that neither party has access to that material without a court order on the standards recognized in *State versus Doliner*.

Accordingly, I'm denying the motion of the defendants to dismiss the complaint based upon an abuse of the Grand Jury process or on the basis of unauthorized disclosure of Grand Jury materials.

All right, you may submit an appropriate form of order, Counsel.

MR. SIMS: Yes, Your Honor. Your Honor, if I might mention, the criminal trials, *State versus Angelo Miele and Sons* is scheduled to begin on January 6th. I have been assigned to assist in the trial of that case and—

THE COURT: I hope you'll bring it to the Attorney General's attention, my remarks in this case. Something has to be done to reorganize the department to conform to the law. I'm only concerned here with the conduct of this civil case, but I'm sure that somewhere along the line there's going to be some activity to compel compliance if it's not voluntarily made by the Attorney General's office.

MR. SIMS: Well, Your Honor, I'm sure that the Attorney General's office will comply with the law, but for the current

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matter again 3-4 weeks from today we're to begin trial and all I'm asking is that the affect of your order to be stayed until completion of the criminal trial so that I could assist—

THE COURT: The affect of what order?

MR. SIMS: The continuing access by the attorneys assigned to the civil case to the Grand Jury materials.

THE COURT: Counsel.

MR. GOODMAN: Your Honor, my original reaction is that that just continues the problem that we've been facing all along, and who knows what other Grand Jury material, you know, Mr. Sims will be reviewing. We're placed in a very difficult situation I think, Your Honor, of having to contain a continued vision of the law which I don't think would be appropriate.

MR. SIMS: Well, Your Honor, may I suggest that we're presenting a compelling need for continued access to the Grand Jury just for the purpose of the criminal trial which should be over by mid-February or so.

MR. IRWIN: Charles Irwin, Irwin, Post and Rosen for Teamsters Local 945. Your Honor, with respect to this last item that you're considering. Normally, I would just, as you know, I sit here and listen as the defense goes forward, but with respect to this, it would seem to me that Your Honor has now ruled that there is an impropriety going on in the Attorney General's office. The Attorney General has suggested, well, he will allow us to continue this impropriety, if you will, until we have completed the Miele case. Now, in justification of that, the Attorney General has said we have a compelling need. If that's so, then it would

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seem to me, Your Honor, that's appropriate for a motion before this Court where we can all be heard with respect to it. Otherwise, unless they go the Appellate Division on some basis with respect to Your Honor's ruling, it should stand as of today.

**THE COURT:** When did you say the trial was supposed to start, Mr. Sims?

**MR. SIMS:** It is currently scheduled for January 6th.

**THE COURT:** All right; I'll permit you to make a motion on short notice returnable on Friday before me as to whether disclosure can be made as a matter of compelling need. You will have to get that notice of motion and serve it on counsel and counsel will be given an opportunity to prepare their thoughts as to whether the Court should apply the standards as set forth in *State versus Doliner* and should permit access in the matter of Miele. All right; and I don't indicate a pre-judgment, but it may be necessary to make an exception in this case because of the predicament that the State finds itself in in conducting criminal prosecution. All right.

**MR. SIMS:** Thank you, Your Honor.

**MR. GOODMAN:** I have one other matter, Your Honor, I spoke to Mr. Sims about the terms the case management order provides, that the answer to the complaint would be due within 20 days from the day of Your Honor's ruling on these motions if Your Honor denies them.

**THE COURT:** I have denied them.

**MR. GOODMAN:** Exactly, and what I would request is that

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that be extended because when that provision was included in the order, it wasn't really anticipated it would be during the holiday season that the answer would have to be prepared.

THE COURT: It will be 30 days from the date of the entry of the order and you'll prepare and submit an order on five-day notice.

MR. GOODMAN: Can I request 45 simply because of the number of defendants involved in the case and because of the holiday season? I just want to make sure all of the defendants have enough time to answer the complaint.

MR. SIMS: I have no objection, Your Honor.

THE COURT: All right, I don't see any problem with that. We're certainly not going to get up a full head of steam before the conclusion of the criminal case.

MR. GOODMAN: I would hope not.

THE COURT: So, I would think 45 days would be adequate.

MR. GOODMAN: Thank you, Your Honor.

THE COURT: Would you provide that in the order on this motion that pursuant to the case management order that the answers will be filed by all defendants within 45 days of the date of this order.

MR. SIMS: Yes, Your Honor.

MR. GOODMAN: Thank you.

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**CERTIFICATION**

I, JUDITH J. HALL, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate copy of the transcript of proceedings as recorded by me stenographically at the time and place hereinbefore set forth.

s/ Judith J. Hall, CSR  
**JUDITH J. HALL**  
**CERTIFIED SHORTHAND**  
**REPORTER**  
License No. XI01291

Date: January 10, 1986

**APPENDIX G—AMENDED COMPLAINT**

IRWIN I. KIMMELMAN  
ATTORNEY GENERAL OF NEW JERSEY  
By: Gerard C. Sims, Jr.  
Deputy Attorney General  
Antitrust Section  
Division of Criminal Justice  
CN 085 25 Market Street  
Trenton, New Jersey 08625  
(609) 984-0960

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION — MERCER COUNTY  
DOCKET NO. L-069569-84**

**CIVIL ACTION**

**STATE OF NEW JERSEY,**

**Plaintiff,**

v.

Arace Brothers; Frank Capasso t/a Capasso Bros.; William A. Carey Co., Inc.; William A. Carey, Jr.; Crystal Carting Corp.; Custom Disposal, Inc.; Reene C. DiNardi; Joe DiRese & Sons, Inc.; Domineck DiRese; Felice DiRese; Joseph DiRese; George A. Lohman; C. Egan & Sons; J. Filiberto Sanitation, Inc.; Joseph B. Filiberto; John C. Filiberto; Carmine Franco & Co., Inc.; Carmine Franco; Salvatore Franco; Frank Fenimore, Inc.; Frank Fenimore; Madeline Fenimore; Giulio Fenimore; Michael Fenimore; Hudson Jersey Sanitation Company; Frank Stamato, Sr.; Frank Stamato, Jr.; Patsy Stamato, Sr.; Patsy Stamato, Jr.; Impac, Inc.; Pompeo Iommetti; Chester Iommetti; Tony

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Iommetti; Industrial Haulage Corp.; Intercity Services, Inc.; Vincent M. Ippolito, Inc.; Vincent M. Ippolito; Jersey Carting, Inc.; Mario Mariano; LaFera Contracting Co.; Joseph LaFera, Jr.; Local 945, Teamsters; C. F. Malanka & Sons, Inc.; Carmine F. Malanka; Gerald E. Malanka; Anthony Malanka; Maplewood Disposal Company; Robert G. Miele; Richard Cignarella; Ralph Marangi & Co.; Ralph Marangi; Franklin Raso; Joseph Marangi; Marpal Company; William F. Palmer; Hazel S. Palmer; Meadowbrook Carting Co., Inc.; John P. Pinto; Joseph C. Roselle; Peter Roselle; Angelo Miele & Sons, Inc.; Christopher Miele; Samuel Miele; Cresencio Miele t/a Joseph Miele & Son; Miele Sanitation Company; Joseph Miele; New Jersey State Municipal Contractors Association; Frank M. Notarangelo t/a Frank M. Notarangelo Carting Service; James Petrozello Co., Inc.; Joseph C. Cassini, Jr.; PET-AM, a Joint Venture; Petrozello-Maplewood, a Joint Venture; Piccini Sanitation, Inc.; L. Pucillo & Sons, Inc.; Carmine Pucillo; Chester Pucillo; P & M Sanitation Corporation; SCA Services, Inc.; SCA Services of New Jersey, Inc.; Schaper Disposal Works, Inc.; Orie Schaper; William Schaper; Frank Stamato & Co.; Vito Stamato & Co., Inc.; Vito Stamato; Stivali Bros., Inc.; Santos Stivali; Carmine Stivali; 3-D Service Co., Inc.; Howard Stamato; Anthony Votto; Val Sica; United Carting Company, Inc.; Ralph G. Mastrangelo; Waste Disposal, Inc.; White Bros. Trucking Company; Vincent Apice; Arthur Roselle; John Albert; Eugene Conlon; Anthony F. Marangi; Carmine D. Marangi; Joseph Mastrangelo; John A. Pinto; Thomas C. Viola,

Defendants.

**FIRST AMENDED COMPLAINT**

Irwin I. Kimmelman, Attorney General of New Jersey,

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pursuant to Sections 6, 10 and 12 of the New Jersey Antitrust Act, *N.J.S.A.* 56:9-6, 10 and 12, and under the powers vested in the Attorney General by the laws of the State of New Jersey, on behalf of the State of New Jersey and its political subdivisions and public agencies within the relevant market, complains and alleges as follows:

***DEFINITIONS***

1. As used herein, the term:

- (a) "Garbage collection" shall mean the service of collecting, hauling, and disposing of trash, rubbish and other solid waste.
- (b) "Garbage collector" shall mean any person, partnership, corporation, or other business entity engaged in garbage collection.
- (c) "Customers" shall mean any person, partnership, corporation, or other business entity, or governmental agency or authority using garbage collection services.
- (d) "Relevant market" shall mean the following counties of the State of New Jersey and their environs: Bergen, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex and Union.
- (e) "Property rights" shall mean a claim by the conspirators and others in the garbage collection industry to have a claim of ownership of an exclusive right to provide garbage collection service to a location. The garbage collector who first serviced a location would obtain the exclusive right to provide such service without competition from the other collectors party to the conspiracy, regardless of a change in the use of the location or

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the identity of the customer occupying such location.

**DEFENDANTS**

2. The defendants are individuals and business entities engaged in garbage collection in the relevant market. The New Jersey State Municipal Contractors Association is a trade association of certain garbage collectors, including a number of the defendants. Local 945, Teamsters is affiliated with the International Brotherhood of Teamsters, Chauffers, Warehousesmen and Helpers of America, and is the union representing employees of the defendant garbage collectors.

The name and business address of each defendant is as follows:

**(a) Corporations and Partnerships:**

Arace Brothers	238 Shepard Avenue East Orange, NJ 07018
William A. Carey Co., Inc.	80 Liberty Street Passaic, NJ 07055
Crystal Carting Corp.	Ward Lane Mahwah, NJ 07430
Custom Disposal, Inc.	P.O. Box 308 Bound Brook, NJ 08805
Joe DiRese & Sons, Inc.	18 Piermont Road Cresskill, NJ 07626

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C. Egan & Sons	102 Fair Street East Orange, NJ 07017
Frank Fenimore, Inc.	28 Center Street Netcong, NJ 07857
J. Filiberto Sanitation, Inc.	Parker Road Chester, NJ 07930
New Jersey State Municipal Contractors Association	18 Piermont Road Cresskill, NJ 07626
James Petrozello Co., Inc.	1222 Harrison Avenue Kearny, NJ 07032
PET-AM, A Joint Venture	1222 Harrison Avenue Kearny, NJ 07032
Petrozello-Maplewood, a Joint Venture	1222 Harrison Avenue Kearny, NJ 07032
Piccini Sanitation, Inc.	23 Grove Street Waldwick, NJ 07463
L. Pucillo & Sons, Inc.	Route 46 Bergen County Lodi, NJ 07644
P&M Sanitation Corporation	North Arlington, NJ
SCA Services, Inc.	60 State Street Boston, MA 02109

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<b>SCA Services of New Jersey, Inc.</b>	<b>1099 Wall Street Lyndhurst, NJ 07071</b>
<b>Schaper Disposal Works, Inc.</b>	<b>131 Paterson St. - Box 98 Hillsdale, NJ 07642</b>
<b>Frank Stamato &amp; Co.</b>	<b>Rt. 46 Lodi, NJ 07644</b>
<b>Vito Stamato &amp; Co., Inc.</b>	<b>76 Sidney Street Lodi, NJ 07644</b>
<b>Stivali Brothers, Inc.</b>	<b>10 Marian Court Fairfield, NJ 07006</b>
<b>3-D Service Co., Inc.</b>	<b>319 Pleasantview Avenue Hackensack, NJ 07601</b>
<b>United Carting Company, Inc.</b>	<b>756 Fairview Avenue Fairview, NJ 07022</b>
<b>Waste Disposal, Inc.</b>	<b>1099 Wall Street, West Lyndhurst, NJ 07071</b>
<b>White Bros. Trucking Co.</b>	<b>210 East 11th Avenue Roselle, NJ 07203</b>

**(b) Individuals**

<b>Frank Capasso t/a Capasso Brothers</b>	<b>17 Chestnut Street - Rm 309 Ridgewood, NJ 07450</b>
<b>William A. Carey, Jr.</b>	<b>William A. Carey Co., Inc.</b>

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Reene C. DiNardi	Custom Disposal, Inc.
Domineck DiRese	Joe DiRese & Sons, Inc.
Felice DiRese	Joe DiRese & Sons, Inc.
Joseph DiRese	Joe DiRese & Sons, Inc.
George A. Lohman	Joe DiRese & Sons, Inc.
Joseph B. Filiberto	J. Filiberto Sanitation, Inc.
John C. Filiberto	J. Filiberto Sanitation, Inc.
Carmine Franco	Carmine Franco & Co., Inc.
Salvatore Franco	Carmine Franco & Co., Inc.
Frank Fenimore	Frank Fenimore, Inc.
Madeline Fenimore	Frank Fenimore, Inc.
Guilio Fenimore	Frank Fenimore, Inc.
Michael Fenimore	Frank Fenimore, Inc.
Frank Stamato, Sr.	Hudson Jersey Sanitation Co.
Frank Stamato, Jr.	Hudson Jersey Sanitation Co.
Patsy Stamato, Sr.	Hudson Jersey Sanitation Co.
Patsy Stamato, Jr.	Hudson Jersey Sanitation Co.

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Pompeo Iommetti	Impac, Inc.
Chester Iommetti	Impac, Inc.
Tony Iommetti	Impac, Inc.
Vincent M. Ippolito	Vincent M. Ippolitto, Inc.
Mario Moriano	Jersey Carting, Inc.
Joseph La Fera, Jr.	La Fera Contracting Co.
Carmine F. Malanka	C. F. Malanka & Sons, Inc.
Gerald E. Malanka	C. F. Malanka & Sons, Inc.
Anthony Malanka	C. F. Malanka & Sons, Inc.
Robert G. Miele	Maplewood Disposal Co.
Richard Cignarella	Maplewood Disposal Co.
Ralph Marangi	Ralph Marangi & Co.
Franklin Raso	Ralph Marangi & Co.
Joseph Marangi	Ralph Marangi & Co.
William F. Palmer	Marpal Co.
Hazel S. Palmer	Marpal Co.
John P. Pinto	Meadowbrook Carting Co., Inc.

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Joseph C. Rosselle	Meadowbrook Carting Co., Inc.
Peter Rosselle	Meadowbrook Carting Co., Inc.
Christopher Miele	Angelo Miele & Sons, Inc.
Samuel Miele	Angelo Miele & Sons, Inc.
Cresencio Miele t/a Joseph Miele & Sons	256 Englewood Avenue Teaneck, NJ 07666
Joseph Miele	Miele Sanitation Company
Frank M. Notarangelo t/a Frank M. Notarangelo Carting Service	70 Pennsylvania Avenue Montvale, NJ 07645
Joseph C. Cassini, Jr.	James Petrozello Co., Inc.
John A. Pinto	Westfield, NJ
Carmine Pucillo	L. Pucillo & Sons, Inc.
Chester Pucillo	L. Pucillo & Sons, Inc.
Orie Schaper	Schaper Disposal Works, Inc.
William Schaper	Schaper Disposal Works, Inc.
Vito Stamato	Vito Stamato & Co., Inc.

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Santos Stivali	Stivali Bros., Inc.
Carmine Stivali	Stivali Bros., Inc.
Howard Stamato	3-D Service Co., Inc.
Anthony Votto	3-D Service Co., Inc.
Val Sica	3-D Service Co., Inc.
Ralph G. Mastrangelo	United Carting Co., Inc.
Vincent Apice	White Bros. Trucking Co.
Arthur Rosselle	White Bros. Trucking Co.
John Albert	North Brunswick, NJ
Eugene Conlon	Hidden Lake Drive North Brunswick, NJ
Anthony F. Marangi	155 Michigan Avenue Paterson, NJ
Carmine D. Marangi	155 Michigan Avenue Paterson, NJ
Joseph Mastrangelo	P.O. Box 456 Fairview, NJ 07022
Thomas C. Viola	

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**CO-CONSPIRATORS**

3. Various business entities and individuals, not named as defendants herein, participated as co-conspirators with the defendants in the violation alleged herein and have performed acts and made statements in furtherance thereof. Such co-conspirators include, but are not limited to, officers and employees of the defendants.

**VIOLATIONS ALLEGED**

*Count I*

*New Jersey Antitrust Act*

4. Beginning at least as early as January 1, 1960 and continuing thereafter until the present, the exact dates being unknown to plaintiff, the defendants and their co-conspirators entered into or engaged in a combination or conspiracy in unreasonable restraint of trade or commerce in the State of New Jersey by entering an agreement or understanding with regard to the existence and enforcement of property rights within the relevant market in violation of *N.J.S.A. 56:9-3*.

5. The aforesaid combination or conspiracy consisted of a continuing agreement, understanding or concert of action among the defendants and co-conspirators, the substantial terms of which were that:

- (a) Property rights would be respected and enforced;
- (b) Municipal contracts for residential garbage collection were rigged and allocated;

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(c) Various other public contracts for garbage collection services were rigged and allocated; and

(d) Contracts for garbage collection services to commercial, industrial and private residential customers were allocated.

6. For the purpose of effectuating and furthering the aforesaid combination or conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including, but not limited to:

(a) Use of threats, intimidation, physical force, and other means to pressure and induce garbage collectors to join the combination or conspiracy, and to retaliate against garbage collectors who had not joined the conspiracy, or who had left the conspiracy, where these said garbage collectors solicited or serviced customers consistent with the property rights concept;

(b) Use of various organizations, such as the New Jersey State Municipal Contractors Association and Local 945, Teamsters, to take action against various garbage collectors in order to suppress or eliminate competition from them that was inconsistent with the property rights system;

(c) Provision of compensation in the form of gifts, benefits and other things of value to public servants and agents and others in exchange for the exercise of discretion by such person as to the content and acquisition of garbage collection contracts in a manner inconsistent with the property rights system.

*EFFECTS*

7. The foregoing combination or conspiracy had the following effects, among others:

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- (a) Competition in the garbage collection industry within the State of New Jersey, and specifically in the relevant market, was restrained and suppressed thus depriving various garbage collectors of the opportunity to compete freely for public contracts and other customers;
- (b) The buying public, including municipalities and other government agencies, within the State of New Jersey was denied the benefit of free and open competition in the purchase of garbage collection services and was restrained in the free exercise of its purchasing power;
- (c) The public bidding laws of the State of New Jersey have been subverted with the resultant loss of competition they are designed to foster; and
- (d) Prices for the sale of garbage collection services to customers were stabilized, fixed and rigged at artificial and noncompetitive levels with resultant overcharges to governmental entities and other customers.

8. As a result of the foregoing combination or conspiracy the State of New Jersey, and its political subdivisions and public agencies within the relevant market have been injured in their business and property.

*Count II**Acts In Derogation Of Statutes And The  
Public Policy Governing Governmental Purchasing*

9. Plaintiff repeats, reiterates and realleges each and every allegation of Paragraphs 4 through 8 of the Complaint and makes the same a part hereof as though set forth in full.

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10. The aforestated acts and practices caused the State and its political subdivisions and public agencies within the relevant market to purchase garbage collection services corruptly, non-competitively and in derogation of the statutes requiring public bidding by them in purchasing garbage collection services, and of those governing the purchase of garbage collection services by the governmental entities, and in derogation of the public policy of securing competition and guarding against favoritism, improvidence, extravagance and corruption in governmental purchasing.

11. As a result of the acts, practices and methods set forth herein, the governmental entities were induced to make improper expenditures of public funds to the detriment of both the governmental entities and the public.

*Count III*

*Common Law*

12. Plaintiff repeats, reiterates and realleges each and every allegation of Paragraphs 4 through 11 of this Complaint and makes the same a part hereof as though set forth in full.

13. The aforesaid combination or conspiracy constitutes an unreasonable restraint of trade in violation of the common law of this State.

*PRAYER FOR RELIEF*

WHEREFORE, plaintiff demands judgment as follows:

(a) Declaring and adjudging that the defendants have entered

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into or engaged in an unlawful combination or conspiracy in restraint of trade or commerce in New Jersey, as set forth herein, in violation of Section 3 of the New Jersey Antitrust Act, *N.J.S.A.* 56:9-3.

(b) Permanently restraining and enjoining the defendants, and their successors, assigns, transferees, officers, directors, agents and employees, from continuing, maintaining or renewing, directly or indirectly, the aforesaid combination or conspiracy, and from entering into, maintaining, or participating in any agreement, understanding, plan, program, concert of action, arrangement, or other device having a similar purpose or effect in accordance with Section 10 of the New Jersey Antitrust Act, *N.J.S.A.* 56:9-10.

(c) Awarding threefold the damages incurred by the State of New Jersey and its political subdivisions and public agencies within the relevant market, in favor of plaintiff, for the use and benefit of the Attorney General as representative of the public and against defendants and each of them, jointly and severally, in accordance with Section 12 of the New Jersey Antitrust Act, *N.J.S.A.* 56:9-12.

(d) Assessing monetary penalties against the defendants, and each of them, in accordance with the provisions of Section 10 of the New Jersey Antitrust Act, *N.J.S.A.* 56:9-10.

(e) Granting plaintiff such relief in accordance with the provisions of Sections 7 and 8 of the New Jersey Antitrust Act, *N.J.S.A.* 56:9-7 and 8, as the Court, "in its discretion and with due consideration of all relevant factors," deems appropriate.

(f) Ordering the payment by defendants of plaintiff's reasonable attorneys' fees, filing fees and reasonable costs of suits,

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including without limitation the expenses of discovery and document reproduction, in accordance with the provisions of Sections 10 and 12 of the New Jersey Antitrust Act, *N.J.S.A.* 46:9-10 and 12.

(g) Declaring and adjudging that the defendants have entered into or engaged in an unlawful combination or conspiracy in restraint of trade or commerce in New Jersey, as set forth herein, in violation of the common law of New Jersey.

(h) Adjudging and decreeing all contracts, whether bid or non-bid, for the purchase of garbage collection services, *void ab initio* and that all monies paid pursuant to said contracts by the State of New Jersey and its political subdivisions and public agencies within the relevant market be returned without set-off by the garbage collector defendants for the use and benefit of the Attorney General of the State of New Jersey as representative of the public.

(i) Awarding damages in favor of plaintiff in the amounts determined to have been sustained by the State of New Jersey and its political subdivisions and public agencies within the relevant market on account of the aforesaid conduct, and that joint and several judgments be entered against the defendants and each of them.

(j) Awarding punitive damages against defendants and in favor of plaintiff for the use and benefit of the Attorney General of the State of New Jersey as representative of the public.

(k) Granting such other and further relief as the law may require or which this Court may deem just and proper.

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**IRWIN I. KIMMELMAN  
ATTORNEY GENERAL OF  
NEW JERSEY**

**BY s/ Gerard C. Sims, Jr.**  
**Gerard C. Sims, Jr.**  
**Deputy Attorney General**

**Dated: 10/30/84**

**APPENDIX H—NEW JERSEY STATUTES ANNOTATED  
56:9-1, ET SEQ.**

**NEW JERSEY ANTITRUST ACT**

**N.J.S.A. 56:9-1. Short title**

This act may be known and shall be cited as the "New Jersey Antitrust Act."

**N.J.S.A. 56:9-2. Definitions**

- a. As used in this act, unless the context otherwise requires "person" shall mean any natural person or persons, or any corporation, partnership, company, trust or association of persons.
- b. "Trade or commerce" shall include all economic activity involving or relating to any commodity or service;
- c. "Commodity" shall mean any kind of real or personal property.
- d. "Service" shall mean any activity which is performed in whole or in part for the purpose of financial gain, including but not limited to sale, rental, leasing or licensing for use.

**N.J.S.A. 56:9-3. Contracts and combinations in restraint of trade**

Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, in this State, shall be unlawful.

*Appendix H***N.J.S.A. 56:9-4. Monopolies; unlawful acquisitions**

- a. It shall be unlawful for any person to monopolize, or attempt to monopolize, or to combine or conspire with any person or persons, to monopolize trade or commerce in any relevant market within this State.
- b. No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition within this State between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community of this State, or tend to create a monopoly of any line of commerce within this State.
- c. No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition within this State between such corporations, or any of them, or to restrain such commerce in any section of community of this State, or tend to create a monopoly of any line of commerce within this State.

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- d. This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.
- e. Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired.

**N.J.S.A. 56:9-5. Exempt organizations and activities**

- a. This act shall not forbid the existence of trade and professional organizations created for the purpose of mutual help, and not having capital stock, nor forbid or restrain members of such organizations from lawfully carrying out the legitimate objects thereof not otherwise in violation of this act; nor shall those organizations or members per se be illegal combinations or conspiracies in restraint of trade under the provisions of this act.

- b. No provisions of this act shall be construed to make illegal:

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- (1) The activities of any labor organization or of individual members thereof which are directed solely to labor objectives which are legitimate under the laws of either the State of New Jersey or the United States;
- (2) The activities of any agricultural or horticultural cooperative organization, whether incorporated or unincorporated, or of individual members thereof, which are directed solely to objectives of such cooperative organizations which are legitimate under the laws of either the State of New Jersey or the United States;
- (3) The activities of any public utility, as defined in R.S. 45:2-13 to the extent that any such activities are subject to the jurisdiction of the Board of Public Utility Commissioners, the Department of Transportation, the Federal Power Commission, the Federal Communications Commission, the Federal Department of Transportation or the Interstate Commerce Commission;
- (4) The activities, including, but not limited to, the making of or participating in joint underwriting or joint reinsurance arrangements, of any insurer, insurance agent, insurance broker, independent insurance adjuster or rating organization to the extent that such activities are subject to regulation by the Commissioner of Insurance

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of this State under, or are permitted, or are authorized by, the Department of Banking and Insurance Act of 1948 (C.17:1-1 et seq.), and the Department of Insurance Act of 1970 (C.17:1C-1 et seq.);

(5) The bona fide religious and charitable activities of any not for profit corporation, trust or organization established exclusively for religious or charitable purposes, or for both purposes;

(6) The activities engaged in by securities dealers, issuers or agents who are (i) licensed by the State of New Jersey under the Uniform Securities Law (C.49:3-47 et seq.), or (ii) members of the National Association of Securities Dealers, or (iii) members of any National Securities Exchange registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, in the course of their business of offering, selling, buying and selling, or otherwise trading in or underwriting securities, as agent, broker, or principal, and activities of any National Securities Exchange so registered, including the establishment of commission rates and schedules of charges;

(7) The activities of any State or national banking institution to the extent that such activities are regulated or supervised by officers of the State Government under the

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Department of Banking and Insurance Act of 1948 (C.17:1-1 et seq;) or P.L.1970, c. 11 (C.17:1B-1 et seq.), or the Federal Government under the banking laws of the United States;

(8) The activities of any state or Federal savings and loan association to the extent that such activities are regulated or supervised by officers of the State Government under the Department of Banking and Insurance Act of 1948 (C.17:1-1 et seq.) or P.L. 1970, c. 11 (C.17:1B-1B-1 et seq.), or the Federal Government under the banking laws of the United States;

(9) The activities of any bona fide not for profit professional association, society or board, licensed and regulated by the courts or any other agency of this State, in recommending schedules of suggested fees, rates or commissions for use solely as guidelines in determining charges for professional and technical services; or

(10) The activities permitted under the provisions of the Fair Sales Act (C.56:4-1 et seq.), an act to regulate the retail sale of motor fuels (C.56:6-1 et seq.), the Unfair Motor Fuels Practices Act (C.56:6-15 et seq.) and the Unfair Cigarette Sales Act of 1552 (C.56:7-18 et seq.).

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c. This act shall not apply to any activity directed, authorized or permitted by any law of this State that is in conflict or inconsistent with the provisions of this act, and the enactment of this act shall not be deemed to repeal, either expressly or by implication, any such other law in effect on the date of its enactment.

**N.J.S.A. 56:9-6. Duties of attorney general**

The Attorney General shall investigate suspected violations of, and institute such proceedings as are hereinafter provided for violation of the provisions of this act. The Attorney General may direct the county prosecutor of any county in which such proceedings may be brought to aid and assist him in the conduct of such investigations and proceedings.

**N.J.S.A. 56:9-7. Violations; dissolution and other relief**

Upon a violation of this act by any corporation or association organized under the laws of this State, or upon failure to comply with the terms of a final judgment or decree rendered by a court of this State for a violation of the provisions of this act, or to comply with a consent judgment or decree rendered by a court of this State concerning an alleged violation of this act, the Attorney General may institute proper proceedings in a court of competent jurisdiction for the forfeiture of charter rights, franchises, privileges and powers, and for the dissolution of the corporation or association, or for the suspension of the privilege to conduct business within the State. The court, in its discretion, and with due consideration of all relevant factors, including

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relevant public interests and competitive and economic factors, may order the dissolution, suspend the privilege to conduct business for a specific period, deny such relief, or provide other appropriate relief. A dissolution shall be conducted in accordance with the procedures specified by law for either voluntary or involuntary dissolution of the particular type of corporation or association.

**N.J.S.A. 56:9-8. Foreign corporations; violations; relief**

Upon a violation of this act by a foreign corporation or association exercising the privilege of conducting business within this State, or upon a failure to comply with the terms of a final judgment or decree rendered by a court of this State issued for a violation of the provisions of this act, or to comply with a consent judgment or decree rendered by a court of this State concerning an alleged violation of this act, the Attorney General may institute appropriate proceedings for the revocation or suspension of franchises, privileges, and powers connected with doing business within the State. The court, in its discretion, and with due consideration of all relevant factors, including relevant public interests and competitive and economic factors, may order the revocation, suspend the privilege to conduct business for a specified period, deny relief, or provide other appropriate relief. A revocation shall have the same effect as a failure to qualify to do business in this State.

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N.J.S.A. 56:9-9. Investigations; subpoenas

a. (1) Whenever the Attorney General, by his own inquiry or as the result of a complaint, suspects that a violation of this act or of the federal antitrust laws is occurring, has occurred or is about to occur, or, whenever the Attorney General believes it to be in the public interest that an investigation be made, the Attorney General or his designee may, prior to the institution of a criminal or civil action thereon, issue in writing and cause to be served upon any person who may have information relevant to such investigation a subpoena to appear and be examined under oath before the Attorney General, his designee or a court of record; answer written interrogatories under oath; or produce documents or any other information or materials for inspection or copying.

(2) Any subpoena issued pursuant to this subsection shall:

(a) Contain a general statement concerning the subject matter of the investigation;

(b) Contain a statement advising the person subpoenaed that he has the right, at any time before the return date of the subpoena, to seek a court order determining the validity of the subpoena;

(c) Contain a statement advising the person subpoenaed that he may have an attorney

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present when he appears and testifies or otherwise responds to the subpoena;

(d) Describe the classes of documentary material to be produced thereunder with sufficient particularity to permit such materials to be reasonably identified;

(e) Prescribe a date and time at which the person subpoenaed shall appear to testify, under oath, or by which the person shall answer written interrogatories or produce the documents or other information or materials for inspection or copying; provided that such date shall not be less than 15 days from the date of service of the subpoena; and

(f) Specify a place for the taking of testimony or for the submission of answers or for the production of documents or other information or materials and identify the persons who are authorized to receive the return of the subpoena.

(3) The powers of subpoena and examination contained in this subsection shall not abate or terminate by reason of any action or proceeding brought by the Attorney General under this act.

b. (1) If a person in attendance upon such investigation pursuant to subpoena, or if a person required to provide the Attorney General answers in writing under oath or otherwise, personally

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refuses to answer a question or produce evidence of any other kind or make the required answers on the ground that he may be incriminated thereby, and if the Attorney General or his designee, in a writing directed to the person, orders that person to answer the question or produce the evidence that person shall comply with the order. After complying therewith, and if but for this section he would have been privileged to withhold the answer given or the evidence produced, such answer, testimony or evidence or any evidence directly or indirectly derived therefrom may not be used against the person in any prosecution for a crime or offense concerning which he gave answer or produced evidence: provided that the answer, testimony or evidence is responsive to the question propounded. However, he may nevertheless be prosecuted or subject to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing evidence or failing to produce evidence in accordance with the order.

(2) Any person who fails to obey the command of a subpoena, after being ordered to do so by a court of competent jurisdiction, is guilty of a crime of the fourth degree. In the alternative, if a person fails to obey a subpoena after being ordered to do so by a court of competent jurisdiction, the Attorney General may apply to that court to have that person adjudged in contempt and to commit him to jail until such time as he purges himself of contempt by responsively answering, testifying

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or producing evidence as ordered.

(3) A person shall not be excused from complying with the terms of a subpoena on the ground of failure to tender or pay a witness fee for mileage, unless demand therefor is made at the time compliance is about to be made. Payment of a witness fee or mileage shall not apply to any officer, director or person in the employ of any person whose conduct or practices are being investigated.

c. (1) Except as otherwise provided in this subsection, no material produced pursuant to this section or information derived therefrom shall be available for examination, without the consent of the person who produced the material, by any person other than the Attorney General or his designee in connection with the enforcement of this act. However, nothing contained herein shall prevent the legitimate use of such information or materials by the Attorney General or his designee, without the consent of the person who produced the materials, for investigation purposes;

(2) The Attorney General or his designee may disclose, without the consent of the person who produced the material, the material produced pursuant to this section or information derived therefrom to officers and employees of appropriate federal or State law enforcement agencies upon the prior certification of an officer of the federal or State law enforcement agency that the

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information will be maintained in confidence and will be used only for official law enforcement purposes; provided, however, the Attorney General or his designee shall advise such person of his intent to disclose such material or information derived therefrom 10 days prior to the disclosure.

(3) The Attorney General or his designee may disclose, without the consent of the person who produced the material, material produced pursuant to this section or information derived therefrom to any court or grand jury.

d. Service of a subpoena pursuant to this section shall be by any of those methods specified in the New Jersey Rules of Court for service of a summons and complaint in a civil action.

**N.J.S.A. '56:9-10; Injunctions and other relief; jurisdiction**

a. The Superior Court shall have jurisdiction to prevent and restrain violations of this act. The Attorney General may institute proceedings to prevent and restrain violations. In addition to granting prohibitory injunctions and other restraints for a period and upon terms and conditions necessary to deter the defendant from, and insure against, the committing of a future violation of this act, the court may grant mandatory injunctions reasonably necessary to restore and preserve competition in the trade or commerce affected by the violation. The court may issue temporary restraining orders or prohibitions

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and the court may proceed in a summary manner.

- b. Any person may institute proceedings for injunctive relief, temporary or permanent in the Superior Court against threatened loss or damage to his property or business by a violation of this act, when and under the same conditions and principles of injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity; under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue. If the court issues a permanent injunction, the plaintiff shall be awarded reasonable attorneys' fees, filing fees and reasonable costs of suit. Reasonable costs of suit may include, but shall not be limited to the expenses of discovery and document reproduction.
- c. In addition to injunctive relief authorized pursuant to subsection a of this section, any person who violates the provisions of this act shall be liable to a penalty of not more than the greater of \$100,000.00 or \$500.00 per day for each and every day of said violation.

**N.J.S.A. 56:9-11. Violations; punishment**

- a. Any person or corporation, or any officer or agent thereof, who shall knowingly violate any of the provisions of this act or aid or advise in such

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violation, or who, as principal, manager, director, stockholder owning 10% or more of the aggregate outstanding capital stock of all classes of the corporation, agent, servant or employee, knowingly does any act comprising a part of such violation, is guilty of a misdemeanor and shall be punished by imprisonment for not more than 3 years or by a fine of not more than \$50,000.00 or both; and if a corporation by a fine of not more than \$100,000.00.

b. Any person convicted pursuant to the provisions of subsection a of this section is hereby denied the right and is hereby prohibited from managing or owning any business organization within this State, and from serving as an officer, director, trustee, member of any executive board or similar governing body, principal, manager, stockholder owning 10% or more of the aggregate outstanding capital stock of all classes of any corporation doing business in this State, and all persons within this State, are hereby denied the right to handle the goods of or in any manner deal with, directly or indirectly, those persons, companies or corporations under the interdict specified herein. All persons knowingly violating any of the provisions of this section, either directly or indirectly, or aiding or abetting directly or indirectly in any violation of any provisions of this section, shall be deemed guilty of a misdemeanor and shall be fined not less than \$100.00 nor more than \$1,000.00 and shall be punished by imprisonment for not less than 30 days nor more

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than 6 months, and shall forfeit not less than \$1,000.00 for each and every day such violation may continue, to be collected by a summary proceeding in a court of competent jurisdiction.

**N.J.S.A. 56:9-12. Treble damage suit**

- a. Any person who shall be injured in his business or property by reason of a violation of the provisions of this act may sue therefor and shall recover threefold the damages sustained by him, together with reasonable attorneys' fees, filing fees and reasonable costs of suit. Reasonable costs of suit may include, but shall not be limited to the expense of discovery and document reproduction.
- b. The State and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section. The Attorney General, on behalf of the State or any of its political subdivisions or public agencies, or the political subdivision or public agency at the direction of or with the permission of the Attorney General, may institute an action to recover the damages provided for by this section or by any comparable provisions of Federal law.

**N.J.S.A. 56:9-13. Final judgment in civil or criminal proceeding as prima facie evidence**

A final judgment heretofore or hereafter rendered in any civil or criminal proceeding brought by the State for violation of this act to the effect that

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a defendant has violated said act shall be prima facie evidence against such defendant in any proceeding brought by any other party against such defendant pursuant to section 12 of this act as to all matters with respect to which said judgment or decree would be an estoppel as between the parties thereto; provided, that this section shall not apply to consent judgments or decrees entered before any testimony has been taken, or to judgments or decrees entered in actions brought under section 12 of this act.

**N.J.S.A. 56:9-14. Limitation period**

Any action brought to enforce the provisions of this act shall be barred unless commenced within 4 years after the cause of action arose, or if the cause of action is based upon a conspiracy in violation of this act, within 4 years after the plaintiff discovered, or by the exercise of reasonable diligence should have discovered the facts relied upon for proof of the conspiracy. No cause of action barred on the effective date of this act shall be revived by this act. For the purpose of this section, a cause of action for a continuing violation is deemed to arise at any time during the period of such violation.

**N.J.S.A. 56:9-15. Suspension of limitations period**

Whenever any civil or criminal proceeding shall be commenced by the State to prevent, restrain or punish a violation of this act, but not including

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an action brought by the State under section 12 of this act, the running of the statute of limitations in respect of every private right of action arising under this act and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for 1 year thereafter; provided that whenever the running of the statute of limitations in respect of a cause of action arising under section 12 shall be suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within 4 years after the cause of action accrued, whichever is later.

**N.J.S.A. 56:9-16. Cumulative remedies**

The remedies provided in this act shall be cumulative.

**N.J.S.A. 56:9-17. Cooperation with Federal Government and with other states**

The Attorney General may cooperate with officials of the Federal Government and the several states in the enforcement of this act.

**N.J.S.A. 56:9-18. Uniform Construction**

This act shall be construed in harmony with ruling judicial interpretations of comparable Federal antitrust statutes and to effectuate, insofar as practicable, a uniformity in the laws of those states which enact it.

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## N.J.S.A. 56:9-19. Appropriation

There is hereby appropriated out of the General State Fund to the Department of Law and Public Safety for the purpose of this act the sum of \$100,000.00 for the period ending June 30, 1971, which sum shall be returned to the General State Fund from the sums derived from litigation instituted by the Attorney General under this act or the antitrust laws of the United States, as determined by the Director of the Division of Budget and Accounting. In addition to the sum hereinabove appropriated, there are hereby appropriated as a revolving fund the sums derived as aforesaid for the purpose of paying any additional expenses incurred by the Attorney General in the administration of this act or litigation instituted under the antitrust laws of the United States, provided, however, that the expenditure of such additional sums shall first be approved by the Director of the Division of Budget and Accounting and the Legislative Budget and Finance Director in the same manner as transfers of appropriations are approved.